

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

LONNIE BAKER,

Plaintiff,

Civil Action No.  
11-CV-14086

vs.

HON. MARK A. GOLDSMITH

LVN CORPORATION,

Defendant.

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**ORDER (1) ACCEPTING AND ADOPTING REPORT AND RECOMMENDATION  
IN PART, (2) DISMISSING DEFENDANT'S MOTION TO DISMISS AS MOOT, AND  
(3) PERMITTING PLAINTIFF'S 8/13/12-FILED AMENDED COMPLAINT**

This matter is presently before the Court on the Report and Recommendation (“R&R”) of Magistrate Judge Komives, entered on July 13, 2012. Dkt. 17. The R&R concludes that Plaintiff’s instant complaint (Dkt. 1-1) fails to state a claim, and is subject to dismissal. The R&R also notes Plaintiff’s request to amend the instant complaint, and ultimately recommends that Defendant’s motion to dismiss (Dkt. 2) be granted without prejudice to Plaintiff filing an amended complaint within a set amount of time. Neither party has filed objections to the R&R and the time to do so has expired. Thus, the parties have waived any further right to appeal. Thomas v. Arn, 474 U.S. 140, 155 (1985).

Although the Court agrees completely with the analysis and recommendation of the R&R, subsequent events prevent the Court from adopting it outright. On August 13, 2012, Plaintiff filed an amended complaint. Dkt. 18. As the amended complaint has already been filed, the Court need not grant the motion to dismiss without prejudice to the Plaintiff filing an amended complaint at some point in the future. Thus, the Court will instead:

- (i) accept Plaintiff’s amended complaint (Dkt. 18),

- (ii) dismiss the pending motion to dismiss (Dkt. 2) as moot, without prejudice to Defendant re-filing a motion to dismiss addressing the amended complaint, and
- (iii) accept the and adopt the R&R (Dkt. 17) in part.

SO ORDERED.

Dated: August 24, 2012  
Flint, Michigan

s/Mark A. Goldsmith  
MARK A. GOLDSMITH  
United States District Judge

**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on August 24, 2012.

s/Deborah J. Goltz  
DEBORAH J. GOLTZ  
Case Manager